IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3662 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT LABOUR UNION

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 3662 of 1997

MR PC MASTER for Petitioners No. 1-2

MR H.C.PATEL ASSTT GOVT PLEADER for Respondents No. 1,3

NOTICE SERVED for Respondents No. 2,4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/01/2002

ORAL JUDGEMENT

#. Heard Mr.P.C.Master, learned advocate appearing on behalf of the petitioners and Mr.H.C.Patel, learned AGP appearing on behalf of the respondents.

#. The grievance of the present petitioners is that the petitioner is the registered trade union and its members whose names are shown in the schedule to the petition are not getting their gratuity amount and therefore, they approached the Controlling Authority. The controlling authority issued certificate to that effect requesting the Collector to recover the amount of gratuity as arrears of land revenue. However, it is the case of the petitioners that despite of this fact, the Collector concerned did not take any step to recover the same except writing some letters to the respondent Nos.2 & 4. Therefore, the petitioners have approached this Court for directing the respondents to comply with the directions of the Controlling Authority under the Payment of Gratuity Act and to recover the amount of the gratuity as arrears of land revenue from the respondent Nos.3 & 4.

#. Learned AGP Mr.H.C.Patel appearing on behalf of the respondents has submitted that he has already conveyed to the concerned respondents as to seriousness of the matter that such amount is required to be paid by the concerned respondent or to be recovered by the Collector from the respondent Nos.3 & 4. Mr.Patel, learned AGP has also submitted that he has attempted to seek necessary instructions from the respondents by way of sending telegram message, but as such, there is no response given by the respondents officers and therefore, submission is, he is not able to point out any factual aspects before this in respect of the whether said payment will be made or not.

#. In view of this factual aspects of the matter, Mr.P.C.Master, learned advocate has submitted that initially the workmen concerned has approached the Controlling Authority functioning under the Payment of Gratuity Act, 1972, claiming gratuity amount from the respondent Nos.3 & 4. Ultimately the controlling authority has passed order directing the respondent Nos.3 & 4 to pay the amount of gratuity to the petitioner. However, no payments were made by the respondent Nos.3 & 4 and therefore, the petitioners had approached the controlling authority with request to issue recovery certificate in favour of the Collector so that the Collector can recover the said amount of gratuity under the provisions of the Land Revenue Code. On the basis of the said request made by the concerned employee to the controlling authority, the controlling authority has issued certificate to the concerned Collector, Dang-Ahva to recover the said amount from the respondent Nos.3 & 4 and to pay the said amount to the concerned employees.

It is also submitted that after obtaining said certificate, Collector concerned remained inactive and no steps have been taken by the Collector for effecting the recovery from the respondent Nos.3 & 4. On the contrary, some correspondence was made with the respondent Nos.3 & 4. It is also pointed out that after issuing recovery certificate, the respondent Nos.3 & 4 had challenged the said order of the controlling authority before the appellate authority but the appellate authority has also dismissed the said appeal. Thereafter, no further challenged is preferred by the respondent Nos.3 & 4 against the order of appellate authority confirming the order of controlling authority. Controlling Authority has passed order on 17th August, 1995 even though till date, the amount has not been recovered by the Collector from the concerned respondent Nos.3 & 4. Not only this, even the respondent Nos.3 & 4 have not paid said amount to the concerned employee and the certificate has been issued by the controlling authority under Section 8 of the Payment of Gratuity Act, 1972 on 23rd February, 1996, though more than four years have passed, said recovery certificate has not been effected by the Collector. Therefore, considering all the factual aspects of the matter, it is necessary to note that the respondent No.3 & 4, who are liable to pay the amount of gratuity to the concerned employee being State Authority as also the recovering authority is also State Authority. Thus, both the State Authorities have failed in complying the order passed by the controlling authority which has become final after rejecting the appeal filed by the respondent Nos.3 & 4.

#. I have considered the submissions of the learned advocates for the parties. It is important to note that the Collector having recovery certificate issued by the controlling authority and he has not been acting upon the said recovery certificate and till date, no recovery has been effected . The respondent Nos.3 & 4 are also State Authority and therefore, considering all the facts and circumstances of the case so also the material on record as well as considering the submission of the learned AGP Mr.H.C.Patel, in view of this Court, even this Court now directs the Collector on the basis of the recovery certificate, it would amounts to further delay the payment to the concerned employees and therefore, instead of directing the respondent Nos.1 & 2, the best course, the respondent Nos.3 & 4 will make the payment immediately to the concerned employees. Therefore, it is directed to the respondent Nos. 3 & 4 to pay the amount of gratuity with interest as provided under the Payment of Gratuity Act to the concerned employees as per the

order passed by the controlling authority in respect of each employee within period of one month from the date of receiving the copy of this order.

#. In view of above discussion, present petition succeeds and the same is allowed accordingly. Rule is made absolute to the extend indicated. No order as to costs.

Date : 22-1-2002 [H.K.Rathod, J.]

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